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SECRETARY OF STATE

BEFORE THE TENNESSEE WATER QUALITY CONTROL BOARD

IN THE MATTER OF:

SCOTT BUTLER HOMES, LLC

RESPONDENT

) **DIVISION OF WATER**
) **POLLUTION CONTROL**
)
)
) **CASE NO. 07-066**
)
) **DOCKET NO. _____**

AGREED ORDER

This matter came to be heard before the Tennessee Water Quality Control Board upon the Director's Order and Assessment of Civil Penalty and the Respondent's Petition for Review. The Board, a quorum present, hereby adopts the following Findings of Fact, Conclusions of Law, Order and Assessments to which the parties have agreed, as evidenced by their signatures below.

FINDINGS OF FACT

I.

Paul E. Davis is the duly appointed director of the Division of Water Pollution Control (hereinafter the "Division") by the Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "Department").

II.

Scott Butler Homes, LLC (hereinafter the "Respondent") is a limited liability company licensed to do business in the state of Tennessee. The Respondent is the developer of the Pinnacle Point Subdivision – Phase II in Rutherford County, Tennessee (hereinafter the "site"). Service of process may be made on the Respondent through Scott Butler, Registered Agent, at 8181 Rocky Fork Road, Smyrna, Tennessee 37167.

III.

Rock Springs Branch and the associated unnamed tributaries are “waters of the state,” as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, irrigation, livestock watering and wildlife. Further, Rock Springs Branch is considered to be an impaired water body due to siltation.

IV.

On June 19, 2006, Division personnel received a complaint stating that construction activities at the site had resulted in fill material being placed in a creek.

V.

On June 20, 2006, Division personnel met at the site with the Respondent and personnel from the City of LaVergne. Division personnel observed that construction activities were ongoing at the site and that approximately three (3) acres of land had already been cleared. Within this disturbed area, the Respondent had altered approximately 500 linear feet of an unnamed tributary to Rock Springs Branch. The stream channel, within these 500 linear feet, had been completely filled and all riparian vegetation had been removed from the stream banks. No erosion prevention and sediment control (“EPSC”) measures were observed in the cleared area.

VI.

A subsequent file review revealed that the Respondent did not have the required permit coverage under the TNCGP for the construction activities at the site, nor was there authorization under an ARAP for the alteration to the unnamed tributary to Rock Springs Branch.

VII.

On June 26, 2006, Division personnel sent a Notice of Violation (“NOV”) to the Respondent describing the violations observed during the June 20, 2006, site inspection. The NOV instructed the Respondent to take the following actions: (1) Immediately stabilize the disturbed area and install EPSC measures to prevent additional materials from entering waters of the state; (2) Within 15 days of receipt of the NOV, submit to the division a completed Notice of Intent (“NOI”), a site specific Storm Water Pollution Prevention Plan (“SWPPP”), and the appropriate fee to obtain coverage under the Tennessee Construction General Storm Water Permit (“TNCGP”) for the construction activities at the site; (3) Within 15 days of receipt of the NOV, submit to the Division an application, supporting documentation and the appropriate fee to obtain coverage under the general ARAP for stream restoration and habitat enhancement.

VIII.

On January 10, 2007, during a follow up site visit, Division personnel observed that the stream channel had not been restored and that EPSC measures installed since the June 20, 2006, site visit had been not maintained. The area of disturbance was beginning to naturally re-vegetate. A file review at the N-EFO determined that none of the documents required by the NOV of June 26, 2006, had been submitted at this time.

IX.

The Respondent submitted a corrective action plan (“CAP”) to restore the affected segment of the unnamed tributary at the site and to stabilize the site with effective erosion prevention and sediment control measures.

X.

On May 29, 2007, the Division approved the CAP submitted by the Respondent.

XI.

On July 9, 2007, Division personnel inspected the site and determined that the Respondent had effectively implemented the CAP.

XII.

During the course of investigating the Respondent's activities, the Division has incurred DAMAGES in the amount of TWO HUNDRED SEVENTY-TWO DOLLARS AND TWENTY CENTS (\$272.20).

CONCLUSIONS OF LAW

XIII.

By altering waters of the state without coverage under an ARAP and by conducting operations without coverage under the TNCGP, the Respondent has violated T.C.A. §§ 69-3-108(a)-(b), 114(b), which states in part:

§ 69-3-108(a):

Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.

§ 69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any Waters of the State;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

§ 69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans,

ORDER

WHEREFORE, PREMISES CONSIDERED, the Board hereby ORDERS that:

1. The Respondent shall maintain appropriate EPSC measures to assure that no additional material leaves the site and enters waters of the state. These professionally designed controls shall be maintained until final grade and erosion preventative permanent cover are established.
2. By November 1, 2007, the Respondent shall replant all willow oaks that have died at the site and submit photographs showing that this has occurred to the following address:

Tennessee Department of Environment and Conservation, Division of Water Pollution

Control, Enforcement & Compliance Section, attention Mark Jordan, 401 Church Street,
L & C Annex 6th Floor, Nashville, TN 37243.

3. Prior to commencing construction or land disturbing activities at the site, the Respondent shall obtain coverage under the TNCGP and any necessary ARAP permits from the Division.
4. Within one (1) year of this agreed order becoming final, all employees of the Respondent that oversee construction activities at the site shall attend the *Fundamentals of Erosion and Sediment Control Workshop* provided by the Tennessee Department of Environment and Conservation, and submit documentation of successful completion to Division personnel identified in item 2 above. The Respondent should obtain certification for all supervisory personnel who are expected to be responsible for land disturbance activities or erosion prevention and sediment control at the site. Information may be found on the program website at <http://www.tnepsc.org/>.
5. The Respondent shall pay a CIVIL PENALTY in the amount of TEN THOUSAND DOLLARS (\$10,000.00) to the Department, hereby ASSESSED to be paid as follows:
 - a. The Respondent shall, within 30 days of this agreed order becoming final, pay a CIVIL PENALTY in the amount of THREE THOUSAND DOLLARS (\$3,000.00) to the Department.

- b. **If and only if** the Respondent fails to comply with item 1 above, the Respondent shall pay a CIVIL PENALTY in the amount of TWO THOUSAND TWO HUNDRED AND FIFTY DOLLARS (\$2,250.00) to the Department within 30 days of default.
 - c. **If and only if** the Respondent fails to comply with item 2 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of TWO THOUSAND DOLLARS (\$2,000.00) to the Department within 30 days of default.
 - d. **If and only if** the Respondent fails to comply with item 3 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of TWO THOUSAND DOLLARS (\$2,000.00) to the Department payable within 30 days of default.
 - e. **If and only if** the Respondent fails to comply with item 4 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of SEVEN HUNDRED AND FIFTY DOLLARS (\$750.00) to the Department within 30 days of default.
9. The Respondent shall otherwise conduct its business in accordance with the Tennessee Water Quality Control Act (“WQCA”) and the rules promulgated pursuant to the WQCA.
10. This agreed order will become final upon entry in the Administrative Procedures Division (“APD”) of the Secretary of State’s Office. A copy of the final agreed order,

showing the filing date with the APD, will be sent by first class mail to the Respondent.

11. The Director of the Division may, for good cause shown by the Respondent, extend for a fixed time period, the compliance dates contained within this Order. To be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. The Director will reply to the Respondent's request in writing. Should the Respondent fail to meet the requirements by the extended date, an associated CIVIL PENALTY shall become due thirty (30) days thereafter.

REASONS FOR DECISION

The Board approves this Agreed Order because it is a fair and reasonable settlement of the matter. The Board also approves of settlements in that they conserve the resources of the Department and the Board.

RIGHTS OF APPEAL

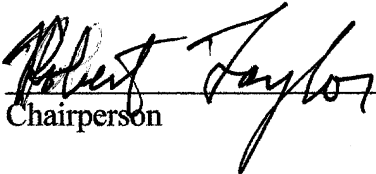
The Respondent is hereby notified and advised of the right to administrative and judicial review of this FINAL DECISION AND ORDER pursuant to the Tennessee Uniform Administrative Procedures Act, T.C.A. §§ 4-5-316, 4-5-317 and 4-5-322 and the Water Quality Control Act, T.C.A. §§ 69-3-111 and 69-3-115.

T.C.A. § 4-5-316 gives a party the right to submit to the Board a Petition for Stay of Effectiveness of a Final Order within seven (7) days after its entry. T.C.A. § 4-5-317 gives any party the right to file a Petition for Reconsideration within ten (10) days after the entry of a Final Order, stating specific grounds upon which relief is requested.


T.C.A. § 4-5-322 and 69-3-111 provide the right of judicial review by filing a Petition in the Chancery Court of Davidson County within sixty (60) days of entry of this Order.

APPROVED FOR ENTRY:

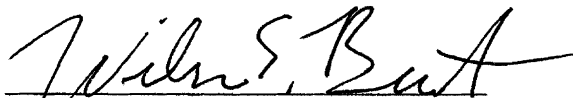
FOR THE TENNESSEE WATER QUALITY CONTROL BOARD:


Chairperson

By entering into this Agreed Order, the Respondent knowingly and voluntarily waives its rights to appeal, as described in the RIGHTS OF APPEAL section above.


Respondent
Scott Butler Homes, LLC

Date 7-12-07


Wilson S. Buntin
Assistant General Counsel
Tennessee Department of Environment & Conservation
Office of General Counsel
20th Floor, L & C Tower
401 Church Street
Nashville, Tennessee 37243
(615) 532-0131

Date 7-12-07

Entered in the Office of the Secretary of State, Administrative Procedures Division, this

17th day of July, 2007.

Charles C. Sullivan II / LSA

Charles C. Sullivan, II, Director
Administrative Procedures Division

LSA

